

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 14 February 2012

**Public Authority:** Surrey NHS Primary Care Trust  
**Address:** Cedar Court  
Guildford Road  
Leatherhead  
Surrey  
KT22 9AE

#### Decision (including any steps ordered)

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1. The complainant requested information held by the Surrey NHS Primary Care Trust (the Trust) regarding the work particulars of a named GP.
2. The Information Commissioner's decision is that the Trust holds no information within the scope of the complainant's request.
3. The Information Commissioner (the Commissioner) requires no steps to be taken.

#### Request and response

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4. On 15 February 2011, the complainant wrote to the Trust and requested information about a named GP in the following terms:  
*'1 The name and address of the Surrey GP practice where he is working, how long he has been working there and what his job title is.*  
*2 Any other positions (either paid or voluntary) that he has within Surrey PCT.'*
5. The Trust responded on 15 March 2011. It stated that the GP was not listed as a partner or salaried GP in Surrey. The Trust also stated that he was not an employee (paid or voluntary) of the Trust.
6. On 15 March 2011 the complainant expressed dissatisfaction with the Trust's response. Specifically he complained that he had been told verbally by the Trust that the GP did work for it.

7. On 5 May 2011 the Trust responded by stating that its previous response was correct. It informed the complainant that GPs who spend the majority of their time in the Trust's area are required to be registered on the NHS Surrey Performers List (the list). It explained that the GP had applied to join the list and that he was on it.
8. However, it clarified that the GP did not work for the Trust. It further explained that those on the list undertake an annual appraisal but that GPs are not required to inform it of where they are working at any given time. The Trust informed the complainant that it could be that he was working as a locum GP in Surrey or working privately: it did not hold information to confirm which one applied to the GP.
9. The complainant asked for clarification of the Trust's response on 6 May 2011. He reiterated he had been informed verbally by the Trust that the GP was working for it.
10. On 11 May 2011 the Trust responded in two forms to the complainant. Firstly the employee who the complainant had referred to above, clarified he had meant in his conversation with him that the GP was on the list, not that he worked for the Trust. The Trust's further response of 11 May 2011 reiterated its response of 5 May 2011.
11. On 15 May 2011 the complainant expressed that he was still unhappy with the Trust's response. He was of the view that the Trust must know where the GP was working as it would be necessary for the annual appraisal system and also because the Trust had passed on to the GP, at the request of the complainant, the fact that he had requested details about him. On 3 June 2011 the complainant requested an internal review.
12. In correspondence on 15 June 2011 the Trust informed the complainant that the appraisal system of those on the medical performers list was confidential. It claimed an exemption that disclosure would contravene data protection principles in the Data Protection Act 1998 (DPA) under section 40 of the FOIA.
13. On 29 June 2011 the Trust sent the complainant the result of an internal review. It stated that the Trust held the personal contact details of those added to its medical performers list. It also reiterated that GPs are not required to inform the Trust where they are working at any given time.
14. The Trust went on to explain that the GP is required to undergo an annual appraisal and that it is likely that his place of work at the time of the appraisal would have been discussed. However, such information could not be disclosed because of the DPA.

## Scope of the case

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15. The complainant contacted the Commissioner to complain about the way his request for information had been handled. Specifically, he disputed that the information requested could not be disclosed. The Commissioner's investigation considered whether the Trust had dealt with the complainant's request in line with the requirements of the FOIA.

## Reasons for decision

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16. At the start of the Commissioner's investigation the Trust clarified that, in withholding the information requested, it maintained its reliance on section 40(2) (third party personal data) and additionally claimed an exemption under section 41 (information provided in confidence). The Commissioner therefore began his investigation on this understanding.

## Objective meaning of the request

17. The Commissioner considers that the objective meaning of the request is of particular relevance in this case. The Trust explained that its reading of the request was for the GP's work information held at the time of the request (ie his position and where he was working on 15 February 2011). The complainant explained to the Commissioner that his objective meaning was any information that the Trust held as to the GP's work information as specified in his request.
18. The Commissioner proceeded on the basis that it would have been reasonable for the Trust to have read the request as being for the most up to date information that it held on points 1 and 2 in that request, even if it was possible that the information would be inaccurate at the date of the request (ie it could no longer be guaranteed that the GP worked in that position or location).
19. However, the Commissioner is also of the view that if information held by the Trust clearly showed that the GP was not working at a Surrey GP practice or for the Trust (either in a paid or voluntary position) then that information would not be that which was requested and therefore it would not fall within the scope of the complainant's request.
20. He takes this objective meaning from the complainant's particular use of language where he places the phrase '*the name and address of the Surrey GP practice where he is working*', before going on to request the length of time he had been there and his job title.

21. The Commissioner considers the objective meaning of point 2 to be a request for recorded information held on a position that the GP had *within* the Trust (ie as either a paid employee or as a volunteer).

### **Information held/not held**

22. Initially the Trust explained to the Commissioner that information was held within the scope of the request in the form of the GP's list application form and a later appraisal that the Trust carried out. It clarified that the most up to date information it held within the scope of the request was held within the appraisal. The Commissioner then asked to be provided with relevant information from the appraisal to enable him to consider the Trust's application of exemptions.
23. The Trust responded that it did not in fact hold the information within the appraisal, either in respect of point 1 or 2. The Trust explained that its earlier position was based on an error in not establishing whether the information was indeed held or not but instead assuming that it was. It also explained that information held in the application form was not that which came into the Commissioner's reading of the request of point 1 and 2 as set out above.
24. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him.
25. Where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner will consider the actions the public authority took to check that the information was not held and if it can explain why it was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities." <sup>1</sup>

### **Scope, quality, thoroughness and results of search**

26. The Trust informed the Commissioner that it had searched the appraisal documentation and the list application form for the GP concerned as these were the most likely places that the requested information would be held. The Commissioner considers that the Trust's searches were adequate in this case. However, in order to be satisfied that the

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<sup>1</sup> This approach is supported by the Information Tribunal's findings in Linda Bromley and Others/ Environment Agency (31 August 2007) EA/2006/0072

requested information was not held in other locations, the Commissioner considered the reasons given by the Trust as to why it would not hold the information.

### **Reasons for holding/not holding the information**

27. The Trust explained what information it would routinely hold on GPs such as the subject of the request. It explained that GPs applying to the list in order to, for example, work as locum GPs, would be required to complete an application form.
28. Such individuals would then, if accepted, be added onto the list. The Trust explained that under the NHS Performers List Regulations 2004, it has a statutory duty to hold a list and manage applications to that list. However, it has consistently explained to the complainant and the Commissioner that it would not record where an individual on the list would be working after their acceptance onto it.
29. The Trust further explained that it commissioned another public authority to manage its list. The functions that this other authority carries out with regard to the list include receiving and processing applications to join the list, maintaining the list and answering GP practice enquiries about the registration of individual GPs.
30. The Trust informed the Commissioner that it had carried out enquiries into whether this other public authority would hold the information requested. Following these enquires it determined that it did not have reason to believe the information was held by the other authority. It explained to the Commissioner this was because the authority does not keep a record of any enquiries that are made to it by GP practices checking whether individuals are on the list.
31. Therefore, in respect of whether it is likely on the balance of probabilities that the Trust holds further relevant information, the Commissioner considers that there are credible reasons as to why information is not be held.
32. The Commissioner is therefore of the view that, on the balance of probabilities and on the basis of the evidence in front of him, the Trust holds no relevant information.

### **Other matters**

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33. Although it does not form part of this decision notice the Commissioner wishes to highlight the following:

34. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, he has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. In this case an internal review was requested on 15 March 2011 and it was provided on 5 May 2011 although the Trust continued to provide further responses to the complainant until 29 June 2011. The Commissioner is therefore concerned that it took approximately 34 working days for the review to be completed by the Trust as he does not consider that there were exceptional circumstances to justify this delay.
35. Further, the Commissioner would like to express concern at the Trust's approach in this case. Where a public authority relies upon an exemption under the FOIA to withhold information (such as was put forward by the Trust at the internal review stage), its reliance on such a claim should be based on a firm knowledge of whether it in fact holds that information in order for it to be withheld. That the Trust did not do so in this case is a matter of regret.

## Right of appeal

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36. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

37. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Rachael Cragg  
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